Supreme Court, U.S.
FILED
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(1)

Docket No. 95-999

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM 1995

* * *

ROBERT L. ALLUM,

Petitioner,

vs.

BANKAMERICA CORPORATION, NEVADA FIRST DEVELOPMENT CORPORATION, BANK OF AMERICA NEVADA, VALLEY MORTGAGE COMPANY, KENNETH CALLAHAN, ARTHUR DANIEL RYSSMAN, SANDRA WASHINGTON, AND PERRY DILORETO

Respondents.

* * *

ON PETITION FOR WRIT OF CERTIORARI FROM THE COURT OF APPEALS FOR THE NINTH CIRCUIT

* * *

PETITIONER'S BRIEF IN SUPPORT OF PETITION AND APPENDIX

* * *

ROBERT L. ALLUM
1670 Zephyr Way
Sparks, Nevada 89431
(702) 358-3635

In Proper Person.

47 pp

QUESTIONS FOR REVIEW

I. DID THE COURT OF APPEALS ERR IN CLASSIFYING A REVIEW OF THE STATE SUPREME COURT'S PROCEEDINGS FOR DUE PROCESS VIOLATIONS "A REVIEW OF THE STATE COURT'S JUDGMENT" AND THEREFORE PRECLUDED UNDER THE PRINCIPLE OF *RES JUDICATA*?

II. DID THE COURT OF APPEALS ERR IN RULING THAT THE LEGAL PRINCIPLE OF *RES JUDICATA* PRECLUDES THE FEDERAL COURTS FROM REVIEWING WHETHER A STATE SUPREME COURT CHIEF JUSTICE SHOULD HAVE DISQUALIFIED HIMSELF UNDER STATE AND FEDERAL DISQUALIFICATION STATUTES?

III. DID THE COURT OF APPEALS VIOLATE THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WHEN THAT COURT RULED THAT THE LEGAL PRINCIPLE OF *RES JUDICATA* PRECLUDES THE FEDERAL COURTS FROM REVIEWING WHETHER THE STATE COURT JUSTICE SHOULD HAVE DISQUALIFIED HIMSELF UNDER BOTH STATE AND FEDERAL DISQUALIFICATION STATUTES?

IV. DOES THE LENGTH OF TIME BEFORE THE DISCOVERY OF THE FACT LEGITIMIZE THE FRAUD OF A STATE SUPREME COURT CHIEF JUSTICE IN FAILING TO DISQUALIFY HIMSELF NOR DISCLOSE ON THE RECORD HIS FINANCIAL DEALINGS WITH A LITIGANT APPEARING BEFORE HIM?

PARTIES

The parties to this action are those named in the caption.

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REPORTS OF OPINIONS

The reports of opinions delivered in this case, by other courts, include the following:

The Court of Appeals for the

Ninth Circuit filed September 22, 1995.

The Court of Appeals for the Ninth Circuit filed August 3, 1995.

The District Court for Nevada entered and served May 16, 1995.

The District Court for Nevada entered and served March 27, 1995.

JURISDICTION OF THIS COURT

This Court has jurisdiction to review the order of the Court of Appeals for the Ninth Circuit filed September 22, 1995, pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States, Amendment XIV, Section 1.

Nevada Revised Statute 1.225.

The Nevada Code of Judicial Conduct, Canons 1-4.

28 U.S.C. Section 455

STATEMENT OF THE CASE

The case at bar is based upon a Nevada Supreme Court justice using his official position to enter into an illegal loan with a litigant (which will result in a **ONE MILLION SIX HUNDRED THOUSAND NET PROFIT FOR THE JUSTICE**), failing to disclose said loan on the record, and participating in adjudicating cases involving said litigant. Further, the litigants, to whom the justice is financially indebted, have utilized the decision participated in by the justice and the legal principle of *res judicata* in each of the federal actions.

The Nevada Supreme Court justice was able to hide his illegal loan until he was forced into bankruptcy.

The federal district court and court of appeals have ruled that federal courts cannot review the issue of whether the state supreme court justice violated due

process requirements because "federal courts lack jurisdiction to review state court judgments." Thus, this Court is presented with the option of reverting the legal system in the Ninth Circuit and the State of Nevada to pre-Fourteenth Amendment due process abuses or re-establishing the Fourteenth Amendment requirements to due process in the Ninth Circuit and State of Nevada.

The following facts of the case have been uncontroverted, to date in any judicial proceeding:

HISTORY OF FINANCIAL DEALINGS

1. Justice of the Nevada Supreme Court Robert E. Rose is One Hundred percent (100%) owner of a Subchapter S Corporation known as Sidelines, Inc. d/b/a/ Sidelines Lounge and Restaurant.

2. Justice Rose obtained an **ILLEGAL** loan, in violation of the charter of the respondent, VALLEY MORTGAGE COMPANY, as

codebtor, with Sidelines, Inc., on April 1, 1990, for a first deed of trust on the commercial land and buildings located at 1195 West Sunset Road, Henderson, Nevada, in an amount in excess of FOUR HUNDRED SIXTY THOUSAND DOLLARS ($460,000.00).

3. Said loan (and Justice Rose, as a codebtor) is now the subject of a Chapter 11 bankruptcy action in the United States Bankruptcy Court For the State of Nevada, in Las Vegas, in case number BK-S-93-25100-LBR, filed 11-19-93, which discloses in Schedule D--CREDITORS HOLDING SECURED CLAIMS of said bankruptcy filing that FOUR HUNDRED SIXTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS AND NINETY CENTS ($462,788.90) is owed in principal, FORTY-THREE THOUSAND FIVE HUNDRED TWO DOLLARS AND EIGHT CENTS ($43,502.08) is owed in interest, EIGHT THOUSAND TWO HUNDRED FORTY-TWO DOLLARS AND NINETY-NINE CENTS ($8,242.99), is owed in **late fees** and FIVE

THOUSAND FIVE HUNDRED TWELVE DOLLARS AND TWO CENTS ($5,512.02) is owed in **FORECLOSURE FEES**.

4. Justice Rose was required to obtain the first deed of trust from a private lending source in order to qualify for his loan with the Small Business Administration (SBA) as a second deed of trust on the land and buildings located at 1195 West Sunset Road, Henderson, Nevada, in an amount in excess of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($375,000.00). Said loan is currently subject to the Chapter 11 bankruptcy proceedings identified in item 3.

5. Justice Rose was required, as a condition of receiving the SBA loan, to extend his personal guarantee, as stated in the SBA brochure, entitled, "Section 504 Certified Development Company Program", under Terms:

> Private sector lenders are secured by a first lien on the

> project. The SBA is secured by a second lien.
>
> **The agency also requires person guarantees from all persons who own 20 percent or more of a company that is financed by a CDC.** (emphasis added)

6. Justice Rose entered into an "Offer and Acceptance Agreement and Earnest Money Receipt" on July 11, 1994 for the sale of his one hundred percent (100%) ownership interest in Sidelines, Inc. for a NET PROFIT to Justice Rose of approximately ONE MILLION SIX HUNDRED THOUSAND DOLLARS ($1,600,000.00).

7. The "Offer and Acceptance Agreement" in item number 2 of Payment of Stock Purchase Price on page 2 states:

> (This note may be subordinated to refinancings, extensions or modifications of the BANK OF AMERICA and ZION CREDIT CORP. notes or replacements thereof, as hereinafter referenced, up to a maximum of ONE MILLION DOLLARS ($1,000,000).

8. The "Offer and Acceptance Agreement" in item number 3 of Payment of

Stock Purchase Price on page 2 states:

> In addition to the purchase price of ONE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS ($1,650,000) for the stock, Buyers shall pay and discharge two existing notes owing from the Corporation payable to VALLEY BANK-BANK OF AMERICA and the SMALL BUSINESS ADMINISTRATION (SBA) (approximate principal balance of EIGHT HUNDRED FORTY THOUSAND DOLLARS ($840,000)).

HISTORY OF LITIGATION

9. The petitioner has been involved in litigation with the respondents, VALLEY MORTGAGE COMPANY, BANK OF AMERICA, starting on January 2, 1991 when the petitioner filed his original complaint in state court alleging three claims for relief (RICO, wrongful discharge and defamation). The state district court dismissed the RICO claim for relief with prejudice on May 28, 1992 and the petitioner timely appealed to the Supreme Court of Nevada, including Justice Rose as the Chief Justice.

The Supreme Court of Nevada, including Chief Justice Rose, obtained jurisdiction in June, 1992 and dismissed, with prejudice, the RICO claim for relief, on March 24, 1993, in Case No. 23394 in a *per curiam* decision.

10. The petitioner petitioned the Court for a writ of certiorari, Docket No. 92-9207, on June 22, 1993, which was denied.

11. The wrongful termination and defamation claims for relief are currently pending on appeal before the Supreme Court of Nevada, including Justice Rose, in case number 24604.

12. Petitioner filed a complaint in the federal district court on April 13, 1993, in case number CV-N-93-280-HDM, alleging the federal RICO claims for relief which the state district court had specifically refused to allow petitioner to plead.

13. The federal district court dismissed the complaint on the basis of *res judicata*.

14. Petitioner appealed the decision to the Court of Appeals for the Ninth Circuit, in docket no. 93-17273, on November 16, 1993.

15. The Court of Appeals affirmed the federal district court decision based upon the principle of *res judicata* on November 18, 1994.

DISCOVERY OF JUSTICE ROSE'S FINANCIAL INVOLVEMENT

16. Petitioner became aware of the federal bankruptcy pleadings and therefore the involvement of Justice Rose with the respondents in December, 1994.

17. Petitioner filed motions, in the Nevada Supreme Court, on February 14, 1995 (1) to disqualify Justice Rose and retract any decisions he participated in and (2) disqualify the remaining four justices for failing to enforce the Nevada Code of

Judicial Conduct when they knew of the financial involvement of Justice Rose with the respondents. These motions are still pending.

18. Petitioner, on February 14, 1995, filed a motion to vacate Order of October 18, 1993 based upon the misconduct of state court judge in violation of 28 U.S.C. section 455 in case number CV-N-93-280-HDM pursuant to FRCP 60(b)(4)&(6).

19. The federal district court denied said motion in a one sentence order entered and served on March 27, 1995.

20. Petitioner filed a motion for clarification, alteration, and reconsideration of the court's order of March 27, 1995 seeking the basis for said order through findings of fact and conclusions of law on April 10, 1995.

21. The federal district court denied said motion in a one sentence order entered and served on May 16, 1995.

22. Petitioner appealed to the Circuit Court of Appeals for the Ninth Circuit in docket number 95-16288.

23. The Clerk of the Court, on August 3, 1995 filed a show cause order "because the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings."

24. The Court of Appeals affirmed the district court order based upon "(federal courts lack jurisdiction to review state court judgments)".

OTHER PENDING LITIGATION HISTORY

25. Petitioner filed a complaint in the federal district court on July 11, 1994 alleging violation of his procedural due process rights, substantive due process violations, conspiracy to violate federal and state RICO statutes, and violaiton of federal and state RICO statutes against the respondents herein.

26. This case is still pending with multiple motions pending, including motions for summary judgment based in part on the legal principle of *res judicata*.

27. BANK OF AMERICA initiated a civil complaint in the Second Judicial District Court of the State of Nevada, case number CV93-7213, against the appellant on December 3, 1993 alleging fraudulent transfer of assets.

28. The case identified in item 18 was assigned to Judge James A. Stone, who recused himself, by order, on March 11, 1994.

29. Judge Deborah A. Agosti, on March 17, 1994, entered an "ORDER ACCEPTING RANDOM ASSIGNMENT OF CASE" in the case identified in item 11.

30. Judge Peter I. Breen, on April 7, 1994, entered an order dismissing the appellant's counterclaims against BANK OF AMERICA for violation of his civil rights,

abuse of process and wilful and wanton misconduct.

31. There were no orders or written instruments filed by Judge Agosti in the case identified in item 11 between her order of March 17, 1994 and Judge Breen's order of April 7, 1994.

32. The appellant appealed Judge Breen's order based upon Judge Breen's order being void for lack of jurisdiction and in violation of District Court Rules 18(1), among other issues in Supreme Court case number 25594.

33. The Nevada Supreme Court, including Justice Rose, dismissed, *sua sponte*, the appeal of appellant on June 14, 1994 without addressing the issue of jurisdiction of Judge Breen.

34. The respondent filed a motion for reconsideration on July 5, 1994 which included in his Arguments, "**4. Chief Justice Rose could have violated, or could**

have appeared to violate, Canon 2 of the Nevada code of Judicial Conduct."

35. The Justices of the Supreme Court, including Justice Rose, denied the appellant's motion for reconsideration on September 6, 1994.

JURISDICTION OF THE DISTRICT COURT

The federal district court obtained jurisdiction pursuant to 18 U.S.C. Section 1965, which specifically confers jurisdiction on this Court for actions brought pursuant to Sections 1962(c), 1962(d), and 1964(c) of Title 18.

DISCUSSION

The decision of the Court of Appeals is in direct conflict with the *stare decisis* of the Court as announced in Kremer v. Chemical Const. Corp., 102 S.Ct. 1883, 456 U.S. 461, 72 L.Ed.2d 262 (1982), at page 1898:

> The State must, however, satisfy the applicable requirements of the Due Process Clause. A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment. Section 1738 does not suggest otherwise; other state and federal courts would still be providing a state court judgment with the "same" preclusive effect as the courts of the State from which the judgment emerged. In such a case, there could be no constitutionally recognizable preclusion at all.

and extended, in Kremer, the requirement for a "full and fair opportunity" to litigate to both *res judicata* and collateral estoppel at page 1897:

> We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate the claim or issue, [citations omitted]. "Re-determination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." [citations omitted].

And clarified the Court's position in footnote 22, at page 1897:

> While our previous expressions of the requirement of a full and fair opportunity to litigate have been in the context of collateral estoppel or issue protection, it is clear from what follows that invocation of res judicata or claim preclusion is subject to the same limitation.

The decision is contradictory to the laws of the State of Nevada as stated in PETA v. Bobby Berosini, Ltd., 111 Nev. Adv. Op. 36 (APRIL 14, 1995), 894 P.2d 337:

> . . . we hold that NCJC is *not* merely a conduct guide to judges, a violation of which is punishable by discipline. The NCJC provides substantive grounds for judicial disqualification. (emphasis in original) 894 P.2d at 340.
>
> . . . 28 U.S.C. section 455(a), a federal statute virtually identical to NCJC Section 3E. The Court noted that section 455(a) was designed to promote public confidence in the integrity of the judicial process. 894 P.2d at 340.
>
> Having concluded that we must

> grant the motion to disqualify Judge Lehman, we further conclude *that we must grant* rehearing and withdraw our prior opinion in this matter. Although Judge Lehman's vote in this case could be considered mere surplusage because three other justices of this court signed the opinion, **we conclude that the role that collegiality plays in an appellate decisions mandates full reconsideration of this matter.** (emphasis added) 894 P.2d at pages 341 & 342.

And in State v. Noyes, 25 Nev. 31, 56 Pac. 946 (1899), at page 49:

> This court has held that the rule of the common law which made the action of a judge interested in the case an irregularity or error, to be corrected upon an appeal by a reversal of the judgment, had been so changed by our statutory provision as to render such a judgment not only voidable, but void.

And in State ex rel. Bullion & Exch. Bank v. Mack, 26 Nev. 430, 69 Pac. 862 (1902) stated at page 442:

> It is a rule of the common law that a judge shall not hear and determine actions in which he is interested [citations omitted], and it is the express declaration of our statute

> [statute omitted] that a judge shall not act in an action or proceeding in which he is interested.
>
> **Under this statutory rule this court has held that the action of a disqualified judge is absolutely void.** [citations omitted] (emphasis added)

The decision also is in conflict with other Ninth Circuit decisions such as Exxon Corp. v. Heinze, 32 F.3d 1399 (9th Cir. 1994) at page 1403:

> We agree that "the Due Process Clause entitles a person to an impartial and disinterested tribunal," [citation omitted], and that "[a] fair trial in a fair tribunal is a basic requirement of due process." [citation omitted] Moreover, like the more stringent federal judges' disqualification statute, 28 U.S.C. section 455, the Constitution is concerned not only with actual bias but also with "the appearance of justice." [citation omitted] Thus, the question is not whether the Alaska judges and jurors are actually biased or even whether they "would do their very best to weigh the scales of justice equally between contending parties," [citation omitted], but whether the alleged pecuniary interest is sufficiently "direct,

> personal, [and] substantial" that it "would offer a possible temptation to the average man." [citation omitted] Regardless of his personal integrity, "no man can be the judge in his own case [or] try cases where he has an interest in the outcome." [citation omitted]

and clarified the "requirements of due process" in footnote 6 of page 1403:

> [citations omitted] (The "probability of actual bias on the part of a judge or decisionmaker is too high to be constitutionally tolerable" when "the adjudicator has a pecuniary interest in the outcome.") [citations omitted]

The Ninth Circuit Court of Appeals, in In re Daily, 940 F.2d 1306 (9th Cir. 1991), followed the "full and fair opportunity to litigate" doctrine at page 1308:

> "*See Blounder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329, 91 S.Ct. 1434, 1443, 28 L.Ed.2d 788 (1971) (due process requires that a party be given a full and fair opportunity to litigate an issue before collateral estoppel may be applied against that party).

and Sanchez v. City of Santa Ana, 936 F.2d 1027 (9th Cir. 1990) at page 1036.

The decision of the court of appeals would also sanction the fraud of Justice Rose in failing to disclose his financial interest to the respondents and be contrary to several state decisions such as:

The duty to disclose any financial relationship of a judge to a party rests with the judge. Blaisdell v. City of Rochester, 135 N.H. 589, 609 A.2d 388 (1992) at page 390:

> At this juncture, we caution that it is the judge's responsibility to disclose, *sua sponte*, all information of any potential conflict between himself and the parties or their attorneys when his impartiality might reasonably be questioned. Sup.Ct.R. 38, Canons 3 C,D (Code of Judicial Conduct); see also Scott v. United States, 559 A.2d 745, 749 (D.C. 1989); Adams v. State, 269 Ark. 548, 552, 601 S.W.2d 881, 885 (1980). Neither the client nor his attorney have any obligation to investigate the judge's impartiality. See Reilly by Reilly v. Southeastern Pa. Transp., 330 Pa.Super. 420, 479 A.2d 973, 986-88 (1984).

Com. v. Hammer, 508 Pa. 88, 494 A.2d 1054 (1985) at page 1059:

> It would indeed be a contemptible system which required counsel in a civil case to ferret out the potential conflicts of interest residing, for example, in a judge's financial interests in order to obtain the judge's disqualification. That duty resides expressly with the judge.

CONCLUSION

Only this Court can redeem the integrity of the American jurisprudence system by granting certiorari in cases like the one at bar to enforce the due process provisions of the Fourteenth Amendment. As John F. Kennedy stated, "You are either part of the solution or you are part of the problem."

DATED this 7th day of December, 1995.

ROBERT L. ALLUM
1670 Zephyr Way
Sparks, Nevada 89431
(702) 358-3635
In Proper Person

Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM 1995

* * *

ROBERT L. ALLUM,

Petitioner,

vs.

BANKAMERICA CORPORATION, NEVADA FIRST DEVELOPMENT CORPORATION, BANK OF AMERICA NEVADA, VALLEY MORTGAGE COMPANY, KENNETH CALLAHAN, ARTHUR DANIEL RYSSMAN, SANDRA WASHINGTON, AND PERRY DILORETO

Respondents.

* * *

ON PETITION FOR WRIT OF CERTIORARI FROM THE COURT OF APPEALS FOR THE NINTH CIRCUIT

* * *

PETITIONER'S APPENDIX

* * *

ROBERT L. ALLUM
1670 Zephyr Way
Sparks, Nevada 89431
(702) 358-3635

In Proper Person.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT L. ALLUM.	) No. 95-16268
Plaintiff-Appellant,	) DC# Cv-93-280-HDM) Nevada (Reno)
vs.	)
BANK OF AMERICA CORPORATION, et al.,	) ORDER
Defendants-Appellees.	)

Before: BROWNING, GOODWIN and O'SCANNLAIN, Circuit Judges

Upon review of the opening brief and the record in this appeal, this court hereby summarily affirms the district court's March 23, 1995 and May 16, 1995 orders denying appellants' motions for relief from judgment pursuant to Fed. R. Civ. P. 60(b) See Worldwide Church of God v. McNair, 805 F.2d 888, 890-91 (9th Cir. 1986) (federal courts lack jurisdiction to review state court judgments); Palomo v. Baba, 497 F.2d 959, 960 (9th Cir. 1974) (district court may not act

inconsistently with circuit court mandate in ruling on post-judgment motions). All pending motions are denied as moot.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

AFFIRMED.

PSMoCal 9/18/95/sg
23

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT L. ALLUM, Plaintiff-Appellant, vs. BANK OF AMERICA CORPORATION, et al., Defendants-Appellees.	No. 95-16288 DC# CV-93-280-HDM Nevada (Reno) ORDER

A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings. See Ninth Cir. R. 3-6.

Within 21 days from entry of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from service of the response. Appellant's failure to comply with this order

shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. Ninth Cir. R. 42-1.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

/s/ CHRISTINE HILL
Christine Hill
Deputy Clerk
Local Rule 27-7

PSM.orders/8/1/95/ch

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT L. ALLUM, CV-N-93-28 O-HDM

Plaintiff,

vs. ORDER

BANKAMERICA CORPORATION, a bank holding company and a California corporation; et al.,

Defendants.

_____/

Plaintiff's motion for clarification, alteration, and amendment of this court's order of March 27, 1995 (#39) is denied.

It is so ORDERED.

Dated this 15th day of May, 1994.

(ENTERED & SERVED May 16, 1995)

/s/ HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE

AO 72
(Rev.8/82)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT L. ALLUM, CV-N-93-280-HDM

Plaintiff,

vs. ORDER

BANKAMERICA CORPORATION, a bank holding company and a California corporation; et al.,

Defendants.

_____/__I

Plaintiff's motion to vacate the order of October 18, 1993 (#33) is denied.

It is so ORDERED.

Dated this 23rd day of March, 1995.

/s/ HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE

AO 72
DISTRICT OF
NEVADA

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

[RIGHTS OF CITIZENS]

Section 1. **Citizenship; privileges and immunities; due process; equal protection.** All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEVADA REVISED STATUTES

1.225 Grounds and procedure for disqualifying supreme court justices.

1. A justice of the supreme court shall not act as such in an action or proceeding when he entertains actual bias or prejudice for or against one of the parties to the action.

2. A justice of the supreme court shall not act as such in an action or proceeding when implied bias exists in any of the following respects:

(a) When he is a party to or interested in the action or proceeding.

(b) When he is related to either party by consanguinity or affinity within the third degree.

(c) When he has been attorney or counsel for either of the parties in the particular action or proceeding before the court.

(d) When he is related to an attorney or counselor for either of the parties by consanguinity or affinity within the third degree.

3. A justice of the supreme court, upon his own motion, may disqualify himself from acting in any matter upon the ground of actual or implied bias.

4. Any party to an action or proceeding seeking to disqualify a justice of the supreme court for a actual or implied bias shall file a charge in writing, specifying the facts upon which such disqualification is sought. Hearing on such charge shall be had before the other justices of the supreme court.

5. Upon the disqualification of a justice of the supreme court pursuant to this section, a district judge shall be designated to sit in his place as provided in section 4 of article 6 of the constitution of the State of Nevada.

6. No person shall be punished for contempt for making, filing or presenting a charge for disqualification pursuant to subsection 4.

(Added to NRS by 1957, 521)

THE NEVADA CODE OF JUDICIAL CONDUCT

CANON 1

A judge shall uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary

Public confidence is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. . . .

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. . . . The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

CANON 3

A judge shall perform the duties of judicial office impartially and diligently.

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the standards that follow apply.

. . .

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality MIGHT REASONABLY BE QUESTIONED, including but not limited to instances where:

Commentary

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared unless the disqualification was waived by the parties after disclosure by the judge

A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant 10 the question of

disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable eflorts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualily himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(I), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary* interests,* and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the household.

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

28 U.S.C. section 455.

Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child

residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of

relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar Proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.